

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SKIDMORE V. LED ZEPPELIN *ET AL.*

No. 16-56057

WARNER/CHAPPELL MUSIC INC. V. SKIDMORE

No. 16-56287

RESPONSE OF MICHAEL SKIDMORE OPPOSING
MOTION TO CONSOLIDATE APPEALS

(Music copyright infringement, on appeal from the
United States District Court for the Central District of California
The Honorable R. Gary Klausner D.C. No. 2:15-cv-03462-RGK-AGR)

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RESPONSE OPPOSING MOTION FOR ORDER CONSOLIDATING APPEALS

Plaintiff Michael Skidmore, Trustee for the Randy Craig Wolfe Trust, opposes the request of the Led Zeppelin parties to consolidate Mr. Skidmore's appeal of the defense jury verdict and other orders (16-56057), and Warner/Chappell's appeal of the district court's decision to deny attorney's fees and costs (16-56287).

The primary reason for Plaintiff's opposition is that the issues in the appeal of the jury verdict are complicated, concern novel issues of law interpreting the Copyright Act of 1909, and deserve the court's full attention. Defendants are intent on consolidating the appeals because they want to relentlessly argue to the court that that Plaintiff's copyright claims were frivolous and in bad faith, thereby prejudicing Plaintiff's substantive appeal. This is simply not the case as the district court found in denying a fee award. However, Plaintiff's interest is keeping the matter before the Court focused on the substantive merits of the copyright and evidentiary issues Plaintiff alleges were wrongly decided, not Defendants' unfounded accusations which will attempt to confuse those issues.

Moreover, even if the cases were to be consolidated, the Led Zeppelin parties' proposed schedule is not acceptable. **First**, it is likely that Plaintiff will file a request for an extension of the briefing schedule in appeal no. 16-56057, as is his right, which

the movants' schedule fails to take into account. **Second**, Defendants' briefing schedule unfairly forces Plaintiff to go first, and allows Defendants to have the last word. **Third**, the proposed staggered schedule disadvantages Plaintiff who is represented by a small firm, as opposed to the large firms which represent the Led Zeppelin defendants. Under Defendants' schedule Plaintiff will have to file a reply brief in support of his appeal, while *simultaneously* filing an answering brief to Warner/Chappell's appeal. Given the complicated issues involved, and voluminous fact discovery, it would be a severe drain on Plaintiff's counsel's limited resources to file two such briefs at the same time.

If the Court is inclined to consolidate the cases—which Plaintiff objects to and believes to be highly prejudicial—then Plaintiff would suggest and propose that the briefing schedule for appeal no. 16-56287 be adopted for both appeals and opening briefs be due on February 13, 2016. In that way both opening briefs would be due on the same day, both response briefs would be due on the same day, and both reply briefs would be due on the same day—and no party would be given any sort of unfair advantage.

However, Plaintiff desires to make clear that he adamantly opposes consolidation as it would cause prejudice by confusing the issues on appeal. In the alternative, Plaintiff asks that the briefing schedule for appeal no. 16-56287 be

adopted for both appeals, instead of the briefing schedule suggested by Defendants.

Plaintiff thanks the Court for its careful consideration of this matter.

Respectfully submitted,

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/d/ October 27, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RESPONSE OF MICHAEL SKIDMORE OPPOSING MOTION TO CONSOLIDATE APPEALS has been served upon all counsel of record via electronic filing:

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Respectfully submitted,

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